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No. 87-

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

STATE OF ALASKA,
Petitioner,

v.

TRUSTEES FOR ALASKA, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

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QUESTIONS PRESENTED

Section 6(i) of the Alaska Statehood Act provides that mineral lands conveyed to the state incident to statehood "shall be subject to lease by the State as the State legislature may direct." The Act further provides for enforcement of this provision by way of forfeiture proceedings "instituted by the Attorney General . . . in the United States District Court for the District of Alaska."

The questions presented are:

1. Do private parties have a cause of action to challenge a state's compliance with provisions of a statehood act in state court, when Congress expressly gave executive oversight authority only to the United States Attorney General, and judicial

enforcement authority only to the federal courts?

2. Did the Alaska Supreme Court improperly disregard the expressed will of Congress that the state of Alaska could "lease" minerals "as the State legislature may direct" when it held that the Alaska Legislature must charge rents or royalties for hardrock mineral leases?

PARTIES INVOLVED

Petitioner is the State of Alaska, admitted to the Union on January 3, 1959. It was defendant in the trial court, and appellee in the Alaska Supreme Court.

Respondents Trustees For Alaska, Nunam Kitlutsisti, Dinyea Corporation, Village of Minto, Alaska Independent Fishermen's Marketing Association, Alaska Center For The Environment, Southeast Alaska Conservation Council, and Friends of the Earth were plaintiffs in the trial court for the State of Alaska, and appellants in the Alaska Supreme Court.

Respondents Alaska Miners Association, Fairbanks North Star Borough, and Joseph E. Vogler were defendant-intervenors in proceedings in the trial court. They were appellees in the Alaska Supreme Court.

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State of Alaska,

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Trustees for Alaska, et al.,

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PETITION FOR A WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

Petitioner State of Alaska respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Alaska Supreme Court entered in this proceeding on May 1, 1987.

OPINIONS BELOW

The decision of the Superior Court for the State of Alaska is reprinted in Appendix A, at p. A1--A15. The opinion of the Alaska Supreme Court has not, as of the time of the preparation of this petition, been reported in West's Pacific Reporter. The slip opinion is reprinted in Appendix B, at p. B1--B86.

JURISDICTION

The opinion of the Alaska Supreme Court was issued May 1, 1987. The

jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3).

STATUTE INVOLVED

Alaska Statehood Act, Pub. L. 85-508, section 6(i), 72 Stat. 339, 342 (1958):

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate

proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

STATEMENT OF THE CASE

1. Background.

Under subsections 6(a) and (b) of the Alaska Statehood Act, the State of Alaska was granted the right to select 103,350,000 acres of land from the United States. Section 6(i) entitled the state to receive mineral deposits in lands it selected, but Congress made this grant of minerals subject to the condition that the state reserve the mineral interest when it sells or grants the land to other parties. Section 6(i) also provides that mineral deposits in mineral lands "shall be subject to lease by the State as the State legislature may direct. . . ." The proviso to section 6(i) specifies that enforcement of the restrictions imposed

upon the mineral land grant by the terms of section 6(i) is to be by way of forfeiture proceedings instituted by the Attorney General for the United States in the United States District Court for the District of Alaska. No private enforcement scheme is expressed in section 6(i).

Since statehood in 1959, the Alaska Legislature has carefully crafted a comprehensive system for the disposal and utilization of state natural resources. See generally, Alaska Stat. 38.05. This system promotes the development of the state's mineral resources and the generation of state revenues by imposing the greatest revenue burdens upon the most economically viable minerals (oil and gas), and the smallest revenue burden on those minerals least economically

viable, such as coal and hardrock 1/ minerals. This has resulted in beneficial employment to many of the state's citizens, the production of more than a fifth of the nation's current supply of crude oil, and the generation of the bulk of the revenues for state government. The Alaska Legislature's mineral statutes are summarized below.

In compliance with section 6(i), the Alaska Legislature has insured that none of the mineral wealth obtained under the Alaska Statehood Act grant will be sold

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1/ Throughout this petition, the term "hardrock minerals" is used to refer to those minerals subject to location under federal mining laws as of the beginning of Alaska Statehood. See Alaska Stat. 38.05.185. Some of the most significant of these minerals are gold, silver, copper, molybdenum, lead, zinc, platinum, tin and tungsten. The term does not include oil, gas, coal or gravel.

or otherwise granted to private parties. Alaska Stat. 38.05.125 requires a reservation of all minerals when the state sells or grants land.

Alaska Stat. 38.05.135 -- 38.05.184 set forth the leasing requirements for coal, phosphates, oil shale, sodium, sulfur, potassium, oil and gas, and geothermal resources. Unsurprisingly for a state whose economy is dependent largely on oil and gas resources, the most detailed statutory provisions deal with oil and gas resources. Alaska Stat. 38.05.180.

The acquisition of hardrock mineral rights is governed by Alaska Stat. 38.05.185 -- 38.05.275. Rights in hardrock minerals are acquired by discovery, location and filing. Alaska Const. art. VIII, sec. 11; Alaska Stat. 38.05.195; Alaska Stat. 38.05.205.

Surface rights are limited to those necessary for mining. Alaska Stat. 38.05.255. The state retains the right to close areas to mining. Alaska Stat. 38.05.185. Unlike on federal land, the miner may not obtain patent. Alaska Stat. 38.05.125.

Under the Alaska Constitution, the Alaska Legislature retains the authority to impose cash rents or royalties if it determines that the hardrock mineral industry can support monetary burdens. Alaska Const. art. VIII, section 11. At present, however, the Alaska statutes do not require cash rents or royalties for hardrock mineral rights. Instead, a set value amount of annual labor is required for hardrock mining claims, Alaska Stat. 38.05.195 and 38.05.210, and annual labor may, at the option of the lessee, be credited against the annual rental amount

for mining leases. Alaska Stat. 38.05.205(b).

Despite the place gold mining holds in the folklore of Alaska, hardrock minerals provide only a small proportion of the value of minerals from state land, and would provide only insignificant additional rental and royalty income to the state. The Alaska Supreme Court noted that Trustees for Alaska and the other private interest groups estimated potential hardrock mineral royalties at only $100,000 per year. Appendix B at B22. This is minuscule when compared to the in excess of one billion dollars in royalties paid to the state for production of oil and gas from state land in 1983. State's Response to First set of Interrogatories at 4.

2. History of the Case

Trustees for Alaska and the other private interest groups are a coalition of environmental, Native Alaskan, and fishing organizations. They filed their action in Superior Court for the State of Alaska, seeking declaratory and injunctive relief based upon the claim that the state's mineral leasing system as applied to hardrock minerals violates section 6(i) of the Alaska Statehood Act because it does not require the payment of cash rents or royalties. Complaint at para. 42, page 11. In the prayer for relief, the groups sought a declaration that the authorization of hardrock mineral production without requiring cash rents and royalties was, among other things, "unconstitutional under the Supremacy Clause of the United States

Constitution, Article IV, Section 2." Complaint at 14.

The matter was submitted to the trial court on cross-motions for summary judgment. The trial court rejected the section 6(i) claims asserted by the private interest groups. First, the court agreed with the argument that the "issue of the state's compliance or non-compliance with the terms and provisions of the Statehood Act, including section 6(i) -- a federal statute -- have [sic] been expressly and exclusively conferred upon federal court through the last sentence of section 6(i)." It then held that section 6(i) of the Statehood Act "does not create a cause of action for private litigants to seek enforcement of the terms of that provision." Appendix A at 9.

On the merits, the trial court ruled that the state's hardrock mineral management system complies with section 6(i)'s restrictions. The court properly noted some of the key features of the state's hardrock mineral management system:

> no fee simple interest or permanent possessory interest is conveyed; the state may revoke or limit such interest under certain circumstances; and an exchange of consideration is required in order to obtain such interest. Specifically, the consideration required is the miners' performance of annual labor of at least $200 per year per mining claim. AS 38.05.210.

Appendix A at 10-11. Turning to the issue of whether cash rents and royalties were required under the terms of section 6(i), the trial court held that "the question of the exact amount of

consideration to be paid for the right to develop hard rock minerals . . . is a policy question for resolution by the legislative rather than judicial process." (Emphasis in original.) Appendix A at 11.

The private interest groups appealed the trial court's judgment to the Alaska Supreme Court. After first applying its liberal standing doctrine in order to allow the private interest groups the opportunity to sue, the Alaska Supreme Court held that "section 6(i) directly controls", Appendix B at 85, and reversed the trial court on both the "private cause of action" and the "rents and royalties" issues.

The Alaska Supreme Court found that the private interest groups had a cause

of action 2/ under section 6(i) of the Alaska Statehood Act notwithstanding language in the Act giving the United States Attorney General -- and only the United States Attorney General -- a public cause of action against the State in the event the State violated section 6(i). Yet in doing so the Alaska Supreme Court conceded that "the United States Attorney General has not sued (the State) nor are there any indications that he plans to do so." Appendix B at 25.

In finding a private cause of action, the Alaska Supreme Court mischaracterized the central legal issue in the case as "whether Congress intended to preclude all litigation concerning the

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2/ The Alaska Supreme Court did not, however, use the phrase "private cause of action".

meaning of Section 6(i) by enacting the proviso" granting the United States Attorney General the power to sue the State for forfeiture. 3/ Appendix B at 28. Without citation to a single case authority, the court concluded that section 6(i) did not preclude suits by private parties against the State for purported violations of section 6(i). Appendix B at 31. Blurring the differences between standing,

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3/ The Alaska Supreme Court properly recognized that this case involves only section 6(i)'s allocation of legislative, executive and judicial authority. The rights of private parties and state courts to be involved in litigation concerning other aspects of the Alaska Statehood Act was not before the Alaska courts and is not before this Court.

jurisdiction, cause of action and relief concepts, 4/ the court reasoned:

> It would be unusual in the extreme if the state court could not construe the meaning of its state's Statehood Act. In the absence of any indication that Congress intended to bar our state courts from interpreting section 6(i), we conclude that appellants' declaratory judgment action seeking an interpretation of section 6(i) may be maintained.

On the rents or royalties issue, the Alaska Supreme Court did not dispute that the state's hardrock mineral system comprises a "leasing" system. Instead, the court divined a Congressional intent, unexpressed in the text of section 6(i),

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4/ See Davis v. Passman, 442 U.S. 228, 239 (1979), n. 18 and 13 Wright and Miller, Federal Practice and Procedure, § 3531.6, at 505 (1984).

that section 6(i) "mandates a system under which the state must receive rent or royalties for its mining leases." Appendix B at 66.

The Alaska Supreme Court issued its opinion on May 1, 1987, remanding the matter to the trial court "with directions to enter a declaration in accordance with this opinion and for such other further proceedings as may be appropriate." Appendix B at 86. In doing so, the court held that "section 6(i) directly controls." Appendix B at 85. Therefore, although the court contemplated further proceedings, the federal law holdings which are the subject of this petition are final for all practical purposes, and review at this time is appropriate under the principles set forth in Cox Broadcasting

Corporation v. Cohn, 420 U.S. 469, 479-85 (1975).

REASONS FOR GRANTING THE WRIT

Review of this case is necessary to insure that state courts do not allow private parties the right to enforce statehood admission acts (and other federal laws) in instances where Congress elected to create only public causes of action enforceable only in federal courts. Review is also necessary to effectuate the underlying Congressional intent in Alaska's Statehood Act that the Alaska Legislature have the sole authority to define the terms of mineral leasing of lands granted to the state.

The Alaska Statehood Act created a compact dividing a large amount of land between two sovereigns -- each with a separate executive, legislative, and judicial branch. Congress eliminated

potential conflict and confusion by allocating power among the branches of government with care. Thus, section 6(i) assigns each governmental function to one or the other of the two sovereigns. It assigns legislative discretion to set the terms of mineral leasing to the Alaska Legislature, executive oversight authority to the United States Attorney General, and judicial enforcement authority to the United States courts.

The Alaska Supreme Court has failed to respect this careful Congressional allocation of authority. It has allowed private interest groups to usurp the exclusive decision-making authority of the United States Attorney General; it has entertained a case committed by compact solely to federal court jurisdiction; and it has interfered with Congress' express delegation of sole

authority to the Alaska Legislature to craft the terms of Alaska's mineral leasing system.

This Court has repeatedly said that there is no general implied right for private litigants to enforce federal law absent clear Congressional intent. The Alaska Supreme Court ignored this holding in the most sensitive of contexts -- where the relationship between a state and the United States under an admission act is at issue. The Alaska Supreme Court's decision must, therefore, be reversed.

1. By Holding that Private Interest Groups had an Implied Private Cause of Action to Enforce Section 6(i) of the Alaska Statehood Act, the Alaska Supreme Court has Violated the Careful Allocation of Legislative, Executive and Judicial Authority Mandated by Congress.

Although the "private cause of action" rubric has only recently become prominent, the concept is not new -- especially in the context of enforcement of restrictions on federal land grants to states. In Mills County v. Burlington & M.R.R Co., 107 U.S. 557 (1883), the Court rejected an attempt by a county to invoke a claimed violation of the grant of swamplands to the State of Iowa in a title dispute with a railroad company. The Court held that the duty imposed by the federal conditions to the land grant

> is a duty which was imposed upon and assumed by the states alone, when they accepted the grant; and whether faithfully performed or not, is a question between the United States and the states; and is neither a trust following the lands, nor a duty which private parties can enforce as against the state.

107 U.S. at 566. Accord, Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 712-713 (1884). 5/

At least two courts of appeal have also ruled against any implied private

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5/ It is noteworthy that over 90 years ago the United States Attorney General opined that, where the grant left a right of reverter in the federal government and the state failed to satisfy a condition subsequent to the grant, the state's title to grant land remained "good", in the Attorney General's words, "until the Government, either by act of Congress or by a suit duly commenced, re-asserted its claim to the lands." 19 Op. Att'y Gen. 522 (1890) (Wisconsin grant). See also 16 Op. Att'y Gen. 397 (1879) (Minnesota grant construed to the same effect). Reverter clauses were common in state land grants, at least prior to the School Lands Act of 1927. In that act the automatic reverter clause was changed to grant the federal government an optional cause of action for forfeiture; the forfeiture clause now also appears in section 6(i) of the Alaska Statehood Act.

right to enforce statehood act restrictions. Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission, 588 F.2d 1216 (9th Cir. 1979), cert. denied 444 U.S. 826 (1979); Price v. State of Hawaii, 764 F.2d 623, 631 (9th Cir. 1985), cert. denied __U.S.__, 106 S. Ct. 793 (1986); and Downer v. Graham, 21 F.2d 732 (8th Cir. 1927).

The recent opinion of the Ninth Circuit Court of Appeals in Keaukaha is especially instructive, since Hawaii, like Alaska, was admitted to the Union in 1959. 6/ There, a group of native Hawaiians attacked the performance of agencies of the State of Hawaii under its statehood law. Section 5(f) of Hawaii's

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6/ Hawaii Admission Act, Pub. L. 86-3, 73 Stat. 5 (1959).

Admission Act required Hawaii to hold certain lands "as a public trust . . . for the betterment of the conditions of native Hawaiians . . . and a use for any other object shall constitute a breach of trust for which suit may be brought by the United States." The Ninth Circuit Court of Appeals found that this trust provision was intended to "especially" benefit native Hawaiians, thereby satisfying the first criteria of the analysis specified in Cort v. Ash, 422 U.S. 66, 78 (1975). Nonetheless, the Court of Appeals rejected the idea that a private right of enforcement existed under the trust provision of the Admission Act:

> The second element of the Cort test, 'explicit or implicit' legislative intent, cuts against implication of a private cause of action here. Our review of the legislative

> history of the Admission Act (citation omitted), has not discovered any indication that Congress intended to created [sic] a private cause of action via the Admission Act. . . . Indeed, the rare references in the Committee reports to enforcement of Section 5's trust provisions refer exclusively to the public cause of action. (Citation omitted.) This does not surprise us, however. It would be unusual for Congress to employ a state's admission act to create private enforcement rights, and it is inconceivable that Congress would intend to do so implicitly.

588 F.2d at 1223 (emphasis added, citations omitted).

Unlike section 5(f) of the Hawaii Admission Act, section 6(i) of the Alaska Statehood Act created no express trust. The absence of such an express trust argues even more forcefully against the implication of a private cause of action

in Alaska's admission law. In fact, the special nature of statehood acts generally also argues forcefully against the implication of private causes of action except where Congressional intent is express. 7/ This is so because statehood acts represent "'solemn agreement(s)' which in some ways may be analogized to a contract between private parties." Andrus v. Utah, 446 U.S. 500, 507 (1980). See also, sec. 4 of the Alaska Statehood Act ("As a compact with the United States said State and its people do agree and declare. . . .") Under the

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7/ When it so intends, Congress knows how to grant a private cause of action. For instance, section 28 of the New Mexico-Arizona Enabling Act states "Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this Act." ch. 310, 36 Stat. 557, 575 (1910).

contract created by the Alaska Statehood Act, Congress devolved only to the United States Executive Branch the power to determine in the first instance whether the State of Alaska had violated the terms of section 6(i).

The conclusion that section 6(i) does not provide a private cause of action is reinforced by the holdings of many cases in non-statehood contexts. These cases have established several key principles. First, Congressional intent is the key determinant of the existence of a private cause of action. 8/

8/ "Whenever we determine the scope of rights and remedies under a federal statute, the critical factor is the Congressional intent behind the particular provision at issue." Jackson Transit Authority v. Local Division 1285, 457 U.S. 15, 22 (1982). See the decade of private cause of action cases cited in (footnote continued)

Second, when a public cause of action is provided to a federal agency in a federal statute, and the same statute is silent as to the creation of a private cause of action, the inference must be drawn that Congress did not intend to create a private cause of action:

> '[U]nless this Congressional intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential predicate for implication of a private remedy simply does not exist'. Northwest Airlines, Inc. v. Transport Workers, 451 U.S. 77, 94, 101 S. Ct. 1571, 1582, 67 L.Ed.2d 750 (1981).

(footnote continued)
Merrell Dow Pharmaceutical Inc. Thompson, ___U.S. ___, 106 S.Ct. 3229, 3234-3235 nn. 9-10 (1986). The Court has held that the "Congressional intent inquiry" test subsumes the four factor analysis first enunciated in Cort v. Ash, 422 U.S 66 (1975). Massachusetts Mutual Life Insurance Co. v. Russell, ___U.S.___, 105 S.Ct. 3085, 3092 n. 13 (1985).

> 'The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide.' California v. Sierra Club, 451 U.S. 287, 297, 101 S. Ct. 1775, 1781 68 L.Ed.2d 101 (1981).

Massachusetts Mutual Life Insurance Company, 105 S. Ct. at 3092. 9/

9/ See also Middlesex County Sewerage Authority v. National Sea Clammers Association, 453 U.S. 1, 15 (1981) ("In the absence of strong indicia of a contrary congressional intent, we are compelled to conclude that Congress provided precisely the remedies it considered appropriate."); TransAmerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 19 (1979) ("(I)t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.") Cf. Touche Ross & Co. v. Redington, 442 U.S. 560, 571-74 (1979) (where the legislative history was silent, conclusion that Congress did not intend to create a private cause of action under a section of the Securities Exchange Act of 1934 was supported by the explicit grant of private rights of

(footnote continued)

The inferences here all point to the exclusivity of the public cause of action granted to the United States Attorney General to enforce section 6(i) of the Alaska Statehood Act. In fact, the Alaska Supreme Court found that the legislative history of the Statehood Act made reference only to the public cause of action. Appendix B at 29. Congress did not simply leave the issue of who could sue the state, and in what courts, at large for judicial invention by state courts.

(footnote continued)
action in other sections of the Act); National Railroad Passenger Corporation v. National Association of Railroad Passengers, 414 U.S. 453 (1974) (where the Amtrak Act expressly gave the United States Attorney General authority to petition for equitable relief in the United States District Court, no additional private cause of action to enforce compliance with the Act's provisions could be inferred).

The private interest groups virtually conceded that they had no private cause of action under the federal law they claim was violated:

> Plaintiffs are not relying on federal law to grant them a cause of action; rather, we are resting on the state courts' inherent power (indeed duty), as courts of general jurisdiction, to grant relief when Alaskans are injured by the State's violation of federal law.

Trustees for Alaska's Response To Motion For Summary Judgment Filed By Defendants, North Star Borough, and AMA, at 12 (June 29, 1984). 10/

10/ Obviously, a party without a cause of action under federal law is not entitled to relief under that same law: "[T]he question whether a litigant has a 'cause of action' is analytically distinct and prior to the question of what relief, if any, a litigant may be entitled to receive. The concept of a (footnote continued)

Given this concession, it was not surprising that the State's trial court correctly ruled that "section 6(i) of the Alaska Statehood Act does not create a cause of action for private litigants to seek enforcement of the terms of that provision." Appendix A at 9.

Although the Alaska Supreme Court properly recognized that the right of private interest groups to maintain an action under section 6(i) turned on the intent of Congress, Appendix B at 26-27, the court erred when it reasoned that "no inference can be drawn . . . from either the context or the history of the

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(footnote continued)
'cause of action' is employed specifically to determine who may judicially enforce the statutory rights or obligations." Davis v. Passman, 442 U.S. 228 at 239 (emphasis added, footnote omitted).

Statehood Act that forfeiture proceedings were meant to be the only means by which a judicial interpretation of the meaning of section 6(i) could be obtained." Appendix B at 29. The rulings of this Court and other federal courts, both with regard to enforcement of statehood land grants and to the general law of private rights of action to enforce federal law, all hold precisely otherwise.

2. By Holding that the Alaska Legislature Must Impose Rental or Royalty Obligations as a Condition to Hardrock Mineral Rights on Mineral Lands Obtained by the State under Section 6 of the Statehood Act, the Alaska Supreme Court has Improperly Disregarded the Expressed Will of Congress.

The Alaska Supreme Court held that "the state's mineral leasing system violates section 6(i) of the Alaska Statehood Act because it does not require rents and royalties on mining leases...."

Appendix B at 85. The private interest groups did not contend, nor did the court find, that the mineral disposition scheme for oil, gas, coal and other non-hardrock minerals is in any manner in contravention of the requirements of section 6(i). Neither was there any contention or finding that the primary requirement of section 6(i) -- that the state reserve the mineral estate from any sales or grants of land -- had been violated with regard to any category of minerals.

Thus, even if private parties were entitled to sue, the Alaska Supreme Court's inquiry should have ended with its recognition that the present system is a "leasing" system, since no other violations of section 6(i) were contended or found. This is so because Congress provided in section 6(i) that the mineral

lands were "subject to lease by the State as the State legislature may direct." Congress left the wisdom of any particular leasing system exclusively to the judgment of the Alaska Legislature. Congress gave no authority to the Alaska Supreme Court to second guess the Legislature in that regard.

The Solicitor's Office, Department of the Interior, prepared an analysis of the extent of the Alaska Legislature's leasing discretion in 1955. Its reasoning and conclusion is illuminating:

> [Section 6(i)] does not attempt to prescribe maximum or minimum rates of royalty as did earlier versions [of that section], but appears to leave the terms of leasing wholly to the discretion of the state legislature. ... [T]he Alaska legislature is left ... with the untrammelled right to frame its own mineral leasing law ... and can, in general, fit

> the provisions of its mineral leasing system to whatever may be its concepts of the public interest.

Appendix C at 12-16. Under this contemporaneous construction by the Department of the Interior, no maximum or minimum royalties are mandated, and the Alaska Legislature remains free not to impose any cash rent or royalty requirement.

In fact, the Alaska Legislature has used sound judgment in exercising its discretion with respect to royalties. As the record indicates, in 1983 the state received over one billion dollars in royalties from oil and gas produced from state land. State's interrogatory answers at 4. The Alaska Legislature correctly determined that the oil and gas industry could absorb that monetary burden without unduly chilling

development. The Alaska Legislature also determined that the hardrock mineral industry could not contribute significantly to state revenues. The record also supports this determination. In fact, the private interest groups themselves estimated potential hardrock royalties at only $100,000 -- a tiny fraction of oil and gas revenues, and an insignificant potential additional revenue source. Appendix B at 22-23.

The only party entitled to complain about the leasing terms established by the Alaska Legislature pursuant to section 6(i) is the United States Attorney General. He has remained silent, even though the system used by the state for disposition of hardrock mineral rights has remained basically unchanged since statehood. Any complaints private parties may have about

the terms of the leasing system are appropriately addressed only to the Alaska Legislature, the United States Attorney General, or Congress. 11/

CONCLUSION

The ruling of the Alaska Supreme Court conflicts with the careful allocation of legislative, executive and judicial authority in the Alaska Statehood Act provisions dealing with the management of Alaska mineral lands. It also directly conflicts with holdings of this Court and of the Ninth Circuit Court

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11/ Congress could be petitioned since it could, with the consent of the state, amend the conditions of the Alaska Statehood Act. For instance, the section 6(i) restrictions have been waived by concurrent federal (Pub. L. 94-204, Section 17) and state (Section 3, Chapter 19 SLA 1976) legislation. This mutual waiver is discussed in State of Alaska v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied 432 U.S. 901 (1977).

of Appeals. The Court should review this case in order to restore the meaning intended by Congress in section 6(i) of the Alaska Statehood Act, to preserve the proper Congressional allocation of federal and state power, and to establish that, when hearing cases based upon statehood acts or other federal statutes, state courts are bound by the federal case law limiting the implication of private causes of action.

Therefore, the State of Alaska respectfully requests that State's petition for a writ of certiorari be granted.

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